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IV.

GENERAL AMNESTY.

IN this era of pacification between the sections lately engaged in civil strife, the question presses upon public consideration, "Has not the time arrived when all the disabilities imposed upon those who participated in the war against the Union should be removed?"

We have reached a period when each party to that memorable contest may begin to see that honest and brave men did conscientiously differ upon the right and the wrong involved in it. Without deeming it proper or necessary here to state the diverse views of the North and South, few men are now found who do not feel that the natural passions of war, in its progress during four years, tended to blind each to any palliation or excuse for the other for the origin or conduct of it. It was a conflict between the States before the tribunal of last resort among nations—*ultima ratio regum*. The decision was adverse to the South. It overthrew the claim of the Confederate States to secede from the Union, and brought them back into the Union under the great Constitution of the fathers of 1789. The South bowed to the decree; and in every form the States of that section have evinced their sincere submission to the judgment pronounced by the tribunal of war upon the issue joined between the parties to the strife.

No sound thinking man in the North now dreams of holding the South in subjection to military power, or of treating the Southern States otherwise than as coequal members with the Northern States of the Union, or of not dealing with the citizens of the South as equal before the law with every citizen of the North. Every day witnesses the increasing evidences of the

removal of the bitterness of the conflict, and of the coöperation of men North and South in promoting the common glory and prosperity of the American Union.

Yet there remain upon the statute-book two or more of those enactments which stigmatize American citizens with disabilities, calculated to do no good, and only fitted to awaken the flames of sectional animosity.

Among these, and prominently, is the civil disability created by the fourteenth amendment upon certain persons who, having taken an oath to support the Constitution of the United States, upon assuming certain offices, Federal or State, "shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof." This disability is to holding certain offices Federal and State, and may be removed in all cases by a vote of two-thirds of each House of Congress.

By an analysis of this provision, it will be seen—

1. The power of removal of the disability created by the Constitution is without exception. The constitutional amendment placed no one beyond the pale of amnesty. It regarded no man so guilty above his fellows as to be outside the benefit of congressional action. From Mr. Davis, the Confederate President, to the humblest soldier or citizen engaged in insurrection, this amendment gave power to relieve from the adjudged disability.

2. It was a disability to hold office only, not of suffrage, nor of any other civil or political right or function.

3. It is clear that the disability imposed does not extend to being a member of a State Legislature.

The language of the amendment is very peculiar :

"No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State," etc.

This amendment, in one clause, points out what positions a person shall be disabled to hold, and, in another, those for his having held which a disability attaches to him. It is drawn

with care and deliberation, and what it expresses, as well as what it omits, must be taken to have been intentional and not inadvertent.

What may the disabled person not be?

1. Member of either House of Congress.
2. Presidential elector.
3. Civil or military officer under the United States.
4. Civil or military officer under any State.

It is obvious that a distinction is made between a member of Congress and a civil officer *under* the United States, for each is named. And well may such a distinction have been made; for long ago, in Blount's case, the Senate of the United States decided that a Senator was not a civil officer of, and *a fortiori*, *under* the United States.

Bearing this distinction in mind, let us now look at what positions the person must have held in order that disability shall attach to him:

1. Member of Congress.
2. Officer of the United States.
3. Member of a State Legislature.
4. Executive or judicial officer of a State.

In this clause, the same distinction is made between a member of Congress and an officer of the United States.

But, further, if the person has been a member of a State Legislature, he is disabled.

But no such position is named among the positions such a person is disabled to hold. With the position of a member of the Legislature in the minds of the framers of this article, as one previously held by the person, it is omitted in the enumeration of those which he shall be disabled to hold, and is clearly not among such, unless a member of a State Legislature be a civil or military officer under any State.

But it is clear that a member of a State Legislature is not a civil or military officer under any State, any more than a member of Congress is a civil or military officer under the United States; and we have shown that the latter branch of the proposition is not true, as well from the clear language of the former clause of this amendment as from the authority of Blount's case.

It follows, therefore, that this amendment does not disable

any one, no matter what positions he may have held, to be elected to a State Legislature. This is perfectly clear, and beyond doubt; and it therefore results that all Confederates, from Mr. Davis down to the most obscure citizen, may not only vote for all candidates for State and Federal positions, legislative and executive, but may act as a State legislator, and as such vote for a United States Senator. If these things be so, why should not Congress extend the benefits of a removal of all disabilities from all persons, as the Constitution proposed to it to do by a two-thirds vote?

Congress has already removed the disabilities of "all persons whomsoever, except Senators and Representatives of the Thirty-sixth and Thirty-seventh Congresses, officers in the judicial, military, and naval service of the United States, heads of departments, and foreign ministers of the United States," by the act approved May 22, 1872. And by special acts Congress has removed from a number of the excepted classes their disabilities, so that it may be safely affirmed that those still under disability are so few as not to exceed, even if they reach, one thousand men.

In his annual message in December, 1873, President Grant uses this language:

"I renew my previous recommendation to Congress for general amnesty. The number engaged in the late rebellion yet laboring under disabilities is very small, but enough to keep up a *constant irritation*. *No possible danger* can accrue to the Government by restoring them to eligibility to hold office."

In this short paragraph the President notes two strong considerations: first, the powerlessness for evil of the few to whom amnesty would now be extended, even if they were so disposed; second, the irritation produced among a whole people by the stigma resting on a few whose attitude during the war, and in bringing it on, was only like their own.

Doubtless, under the influence of this message, Mr. Maynard, of Tennessee, a Republican, introduced a bill to remove the disabilities of all persons, without exception. It passed the House on a division, by a vote of 141 yeas to 29 nays. The House was Republican, of which Mr. Blaine was then Speaker, and a mem-

ber of the Committee on Rules, from which Mr. Maynard reported the bill. The bill went to the Senate, passed to a second reading, but was not finally acted on.

In the Forty-fourth Congress, Mr. Randall offered a bill (very similar to that proposed by Mr. Maynard) on the 15th of December, 1875, upon which, in January, 1876, the fierce debate occurred in which Mr. Blaine led the opposition to the bill, and it was defeated. The whole debate showed that, unless the name of Mr. Davis was excepted, the opposition to the bill would not yield, so that the whole objection to general amnesty rests upon the case of one man.

The points raised as to him cannot be that he was a member of the Thirty-sixth and Thirty-seventh Congresses, and resigned upon the secession of his State, for so did every other Southern Senator and Representative who sided with the Confederacy. It cannot be because, having sworn to support the Constitution as a Senator, he violated his oath in taking part with his State, for the fourteenth amendment makes that no objection to amnesty, since it is the basis of the disability it imposes on every person. And in respect of this point so often in the past cast as a stigma upon the men who took part with the Confederate States, who had previously sworn to support the Constitution, a remark may be quoted of Hon. Mr. Garfield, of Ohio, made in a colloquy with the writer, on the 19th of January, 1876, in the House of Representatives, in regard to the bearing on the case of the people of the Confederacy, of that of General Washington, who had been a sworn soldier of George III., and yet led the Revolutionary armies against his king. He said:

“My friend will allow me to correct him. I did not speak of those who resigned their commissions, and afterward took service against the Union. I spoke of those who, yet being under oath, contemptuously struck against us without resigning, as many of them did, with their oaths still upon their souls.”

While, as I then replied, I am not aware of any such persons, it is unquestionable that Mr. Davis was not one. He resigned openly and went back to his State, which had passed its ordinance of secession.

What, then, distinguishes the case of this one man, Mr. Davis,

from the Vice-President of the Confederacy, who sits daily with the respect of Northern men in the present House of Representatives? or from a score of others in the present Congress, who are *in consimili casu*?

It is alleged that he was privy to cruelty to prisoners. I take pleasure in saying that there is no man in the whole South who does not know, or believe, that this allegation is utterly groundless. Mr. Davis, in the judgment of the writer, was and is wholly incapable of committing any wrong against an unarmed and defenseless prisoner.

But if the evidences relied on in the debate of 1876 to establish this gross charge were sufficient, they were in the possession of the Government while Mr. Davis was in prison, for two years. When Mr. Boutwell, on the 11th of June, 1866, offered a resolution to hold Mr. Davis for trial, it was only for treason. When he was bailed, with the acquiescence of the Government, in May, 1867, Mr. Evarts (the present Secretary of State) representing the United States in the Federal court on that occasion, there was no hint that he was suspected of the deeper crime of the murder of prisoners.

And who became his bail? I shall never forget the presence of Mr. Gerrit Smith and Horace Greeley (whose professed philanthropy has never been impugned by Northern men), in Richmond to set at liberty, on their recognizance, the prisoner of Fortress Monroe; and these would scarcely have released him from custody on the charge of treason, had he been privy to such a crime as cruelty to the Federal captives. And when, in December, 1873, the President and the House of Representatives sanctioned the removal of his disabilities, with those of all others, there was no breath of suspicion of this gross crime against him.

And yet all the testimony on which the debaters of January, 1876, relied to asperse his character on this point was, and had been, in the hands of the Government from the time of the trial of Wirtz, during the imprisonment and at the date of the discharge of Mr. Davis, and down to the passage of the Maynard bill in 1873.

It will not do, therefore, to rest the denial of amnesty to Mr. Davis upon this ground.

It is then said, "He was the leader of the Confederacy, its President."

That is true. But if it is meant that he was in the van of the secession movement, that he led its march, it is not so. Thousands of men in the South, now occupying high positions of trust and power in the Union and in the States, were more pronounced than Mr. Davis. He acted as others did, in accordance with a great popular movement. He concurred in their action; and, when called to the presidency of the Confederate States, he accepted the summons of his people to do their will with all his ability, and with integrity to the trust reposed in him.

"The very head and front of his offending hath this extent, no more."

But some seem to think it necessary to have a great example, in the person of one whose disability should be a monumental evidence of the evils of rebellion, and that Mr. Davis should be the scape-goat for his people's sin.

Does not every generous soul feel that the South—as he stands stigmatized for their offense—will have a keener sense of the injustice done to him, and that thus will be produced that "constant irritation" of which President Grant spoke, which, in the interests of peace and unity, should rather be allayed than excited? Is it not the wisdom of a statesman to avoid all needless causes of irritation; and can it better be done than by a general and unexcepted amnesty?

But, as has been shown, to except Mr. Davis, or any others of the disabled class, still leaves to them all civil rights—the right of suffrage, and eligibility to the Legislatures of the States. If so, will not their exercise of these capacities be more dangerous to the peace and welfare of the Union (upon the hypothesis of any danger, which I emphatically deny), when they are treated as alien enemies, than if admitted by a more generous policy to the full measure of the rights and privileges of American citizens?

In one word, are the conjectural evils which may result from the amnesty of all comparable in weight to the real evils which must follow from its denial? The irritation which is kept alive by disabilities continued would be subdued forever by amnesty, and the disaffection, which is the natural result of the punitive

policy, would be wholly disarmed by the removal of all civil disabilities.

As an illustration of this general view, take the case of the denial of pensions to the soldiers and widows, and children of soldiers, of the wars with Great Britain, "who in any manner voluntarily engaged in, or aided or abetted the late rebellion against the authority of the United States."—*Revised Statutes of U. S.*, § 4,716.

Hear the simple story of one old man in Virginia: "This comes from a man in his eighty-sixth year; I am too old to work, and my wife is in her eighty-eighth year; has not been able to walk for the last ten years, and of course we have a hard time of it. I was a soldier in the War of 1812, and because I cannot take the iron-clad I am left to suffer. *Is it right?*"

If the appeal of a Roman soldier, battle-scarred in the service of his country, could arouse to vengeance the populace of the great ancient republic, can aged, infirm, and wounded soldiers of the South, who defended the country in the Second War of Independence, be denied their pensions without stirring the emotions of discontent and disaffection among the younger sons and scions of the veterans of the former wars of the American Republic?

Does not wisdom dictate a repeal of all those laws which make the Northern and Southern citizen to differ in the reception of the benefits of a common government? If peace has really come—if the Union be really restored—let amnesty in every form be extended for the past, and the hopes of the future be participated in by all men of all classes and sections throughout our reunited States.

General amnesty for all, including Mr. Davis as standing on the same platform with all other citizens who gave aid and comfort to the Southern Confederacy, is a measure of the highest wisdom and of permanent peace. Nearly thirteen years have passed away since the last gun of civil strife was heard. The Southern States have returned to the Union, and each of them is in the possession and under the control of her own people. Every step toward this now happily-attained result has been marked by the removal of discontent, and the creation of a feeling of confidence and hope in the restored order of things. In

the passing years, nearly an old generation has passed away and a new one has come upon the scene. Let us stimulate, not stifle, the uprising of good feeling and affection. If we are to have success and prosperity and glory, it must come from the unified sentiment of North and South, in earnest coöperation for the achievement of common purposes. Let all sense of injustice be removed by an obliteration of the enmities of the past existing in the record of our common country, against every man. Let no exception remain, to whom the South must look as standing in its stead to endure penalty in order to their enjoying impunity. For, be assured, no Southern man will rejoice in his exemption from disability for the part he took in behalf of the lost cause, as long as his sympathy is aroused for the substituted sufferer in his people's place—for he knows little of the subtle motives to human action, who will not fear that sympathy for the vicarious victim may keep alive in many hearts the affection for a buried Confederacy, and stifle the hopeful desire to coöperate with their late foes, now friends and allies, in maintaining the integrity, in conserving the honor and credit, of the Federal Government, and in common efforts for the glory and perpetuation of this American Republic of free and prosperous States.

Let amnesty, in all its forms, become our policy, and the result will be peace, real and permanent peace and unity, between the once-alienated sections of the republic.

J. RANDOLPH TUCKER.